

REMARKS

Claims 1-5, 9-15, and 28 are pending in the Application and stand rejected. Reconsideration and continued examination are respectfully requested.

Claim 1 was rejected under 35 U.S.C. 103(a) as being obvious from the combination of Saunders, Tzanetakis, and Pohlmann.

Claim 1 is amended to recite, among other limitations, “wherein selecting audio frequency components comprises filtering audio frequency components having a frequency less than a predetermined frequency in the speech range”. Although Examiner contends that “Even if all frequency components are selected for analysis such as that of the current application, all components would be below a frequency in the audible range”, Assignee submits that the same would not be the case for the claimed audible range.

Additionally, Assignee respectfully submits that one skilled in the art would not be motivated to combine the sampling of Saunders and Tzanetakis with the “filtering audio frequency components having a frequency less than a predetermined frequency in the audible range”. It is noted that Tzanetakis uses MPEG audio files. MPEG audio is sampled at rates such as 44.1 KHz or 48 KHz. Accordingly, no aliasing would occur for any frequency in the speech range.

Accordingly, Assignee respectfully requests allowance of claim 1, as now amended, and its dependents.

Additionally, claim 28 claims that the predetermined frequency is about 4 KHz. “A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.

Appln. No. 10/695,125
Resp. to Office Action dated Sept. 21, 2009

Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993)." MPEP 2143.01. The stated reason for modifying Saunder and Tzanetakis with Pohlman, and telephone sampling, is to prevent distortion. However, with sampling rates at 44.1KHz or 48 KHz, aliasing of frequencies that are anywhere near the vicinity of 4Khz would not be an issue. Thus, one skilled in the art would not be motivated to make such a combination.

Accordingly, Assignee respectfully requests allowance of claim 28.

Final Matters

The Office Action makes various statements regarding the remaining claims and the references that are now moot in view of the previously presented amendments and/or arguments. Thus, the Applicants will not address all of such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicants reserve the right to argue additional reasons supporting the allowability of the remaining claims should the need arise in the future.

Appln. No. 10/695,125
Resp. to Office Action dated Sept. 21, 2009

CONCLUSION

Applicant respectfully submits that claims 1-6 and 8-26 are in condition for allowance, and requests that the application be passed to issue.

Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Please charge any required fees not paid herewith or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Date: December 21, 2009

Respectfully submitted,

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